IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,

v.

ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court for the Western District of Wisconsin

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE*

RICHARD T. CONWAY
DAVID B. COOK

SHEA & GARDNER
734 Fifteenth Street, N. W.
Washington, D. C. 20005

HARRY J. BREITHAUPT, JR.
Vice President & General Counsel
E. PARKER BROWN
Assistant General Attorney

Association of American Railroads
1920 L Street, N. W.
Washington, D. C. 20036

Attorneys for the Association of American Railroads.

WILSON • EPES PRINTING CO., INC. • RE 7-6002 • WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,

v.

ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court for the Western District of Wisconsin

---

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Association of American Railroads respectfully moves for leave to file the attached brief as *amicus curiae*. The brief supports the decision of the district court, and thus the position of the appellees. Requests for consent by the parties to the filing of the brief were granted by appellees but denied by appellants.

The Association of American Railroads, with headquarters in Washington, D.C., is composed of railroads which operate 96% of the trackage, employ 94% of the workers and produce 97% of the freight revenues of all railroads in the United States. A listing of the full membership of the Association is set forth in an Appendix hereto. The operations of six of those railroads include trackage and other facilities located in Wisconsin. As of December 31, 1975, those railroads' total miles of track in that State was about 5900, and their gross

intrastate operating revenues in Wisconsin in 1975 totalled about $290 million. In addition, many other railroads participate in the handling of freight shipments that pass through, or originate or terminate in, Wisconsin in moving from point of origin to point of destination.

The Association represents its members in a wide variety of matters that are of interest or concern to many or all of them, including matters that affect competition between the railroad and motor carrier industries. State limitations upon the maximum size and weight of trucks are of concern to the Association and its member railroads not only insofar as they are users of the highways, but because such limitations have a direct effect upon railroad-motor carrier competition. Unlike the motor carriers who operate over highways constructed, owned and maintained by the States, the railroads generally have borne, and now bear, the tremendous costs involved in constructing, owning and maintaining the roadbeds and tracks upon which their trains operate. The resulting competitive advantage of the motor carriers will be magnified, and the ability of the railroads to compete will be further crippled, if appellants' arguments in this case should be adopted by the Court.

As is more fully set forth in the attached brief, appellants not only would have this Court reverse the district court and strike down a Wisconsin limitation upon the length of motor vehicles operating on the highways of that State, but also would have this Court overrule a line of decisions dating back to 1927 which have upheld the right of the States to regulate the size and weight of motor vehicles operating upon their highways, in the absence of discrimination against interstate commerce or supervening Federal legislation. If that should happen so as virtually to free the motor carriers from effective size or weight restrictions, the perilous financial

stiuation of many of the railroads would be further undermined and the nation's railroad transportation system, as well as the railroads themselves, could be adversely affected. Hence, this case involves matters of substantial importance to the Association and its member railroads.

The purpose of the attached *amicus* brief is to explain the importance of this case to the railroad industry and to set forth our reasons why the decision below should be affirmed. We believe that the arguments which we present in substantial measure will supplement, rather than duplicate, the arguments made by appellees, and that they will be helpful to the Court in disposing of the appeal. For these reasons, we have filed this motion and urge that leave to file the attached *amicus* brief be granted.

Respectfully submitted,

RICHARD T. CONWAY
DAVID B. COOK

SHEA & GARDNER
734 Fifteenth Street, N. W.
Washington, D. C. 20005

HARRY J. BREITHAUPT, JR.
Vice President & General Counsel
E. PARKER BROWN
Assistant General Attorney

Association of American Railroads
1920 L Street, N. W.
Washington, D. C. 20036

Attorneys for the Association of American Railroads.

APPENDIX

Full Member Roads

Akron, Canton & Youngstown Railroad Co.
Alton & Southern Railway Co.
Atchison, Topeka & Santa Fe Railway Co.
    Los Angeles Junction Railway
    Illinois Northern Railway
Atlanta & St. Andrews Bay Railway Co.

Baltimore & Ohio Railroad Co.
    Curtis Bay Railroad Co.
    Staten Island Railroad Corporation
Baltimore & Ohio Chicago Terminal Railroad Co.
Bangor & Aroostook Railroad Co.
    Van Buren Bridge Railroad
Belt Railway Company of Chicago
Bessemer & Lake Erie Railroad Co.
Boston & Maine Corporation
Buffalo Creek Railroad
Burlington Northern Incorporated
    Oregon Electric Railway
    Oregon Trunk Railway
    Walla Walla Valley Railway

Cambria & Indiana Railroad Co.
Canadian Pacific Limited (*Lines in the U.S.*)
    Aroostook Valley Railroad
    Canadian Pacific Lines in Maine
    Canadian Pacific Lines in Vermont
Chesapeake & Ohio Railway Co.
    Covington & Cinn. Elev. Railroad & Transfer & Bridge Co.
Chicago & Eastern Illinois Railroad
    Chicago Heights Terminal Transfer Co.
Chicago & Illinois Midland Railway Co.
Chicago & North Western Transportation Co.

Chicago & Western Indiana Railroad Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad
    Washington, Idaho & Montana Railway Co.
Chicago, Rock Island & Pacific Railroad Co.
    Warren & Quachita Valley Railway Co.
    Peoria Terminal Co.
Clinchfield Railroad Co.
Colorado & Southern Railway Co.
Consolidated Rail Corporation (CONRAIL)

Delaware & Hudson Railway Co.
    Greenwich & Johnsonville Railway Co.
Denver & Rio Grande Western Railroad Co.
Detroit & Mackinac Railway Co.
Detroit & Toledo Shore Line Railroad Co.
Detroit, Toledo & Ironton Railroad Co.
Duluth, Missabe & Iron Range Railway Co.

Elgin, Joliet & Eastern Railway Co.

Fort Worth & Denver Railway Co.

Galveston, Houston & Henderson Railroad
Georgia Railroad
Grand Trunk Lines (and other lines in the U.S. controlled or subject to control by the Canadian National Railways)
    Grand Trunk
        Central Vermont Railway, Inc.
        Duluth, Winnipeg & Pacific Railway
    Canadian National Railways
        Lines in Michigan
        Lines in New England
        Lines in New York
        Lines in Vermont
        Minnesota & Manitoba Railroad (Leased Line)
Green Bay & Western Railroad Co.

Houston Belt & Terminal Railway Co.

Illinois Central Gulf Railroad
- Chicago & Illinois Western Railroad Co.
- Waterloo Railroad

Kansas City Southern Railway Co.
- Arkansas & Western Railway Co.
- Fort Smith & Van Buren Railway Co.
- Kansas & Missouri Railway & Terminal Co.

Kentucky & Indiana Terminal Railroad

Lake Superior & Ishpeming Railroad
Louisiana & Arkansas Railway Co.
Louisville & Nashville Railroad Co.
- Carrollton Railroad Co.

McCloud River Railroad Co.
Maine Central Railroad Co.
- Portland Terminal Co.

Manufacturers Railway Co.
Minneapolis, Northfield & Southern Railway Co.
Missouri-Kansas-Texas Railroad Co.
- Inc. Beaver, Meade & Englewood Railroad Co.

Missouri Pacific Railroad Co.
- Doniphan, Kensett & Searcy Railway Co.
- New Orleans & Lower Coast Railroad Co.
- Brownville & Matamoras Bridge Terminal Co.
- St. Joseph Belt Railway

Missouri-Illinois Railroad Co.

Norfolk & Western Railway Co.
- Chesapeake Western Railway Co.
- Lorain & West Virginia Railway Co.
- New Jersey, Indiana & Illinois Railroad Co.
- Norfolk, Franklin & Danville Railway Co.
- Lake Erie & Ft. Wayne Railroad Co.

Pittsburgh & Lake Erie Railroad Co.
Peoria & Pekin Union Railway Co.

Pittsburg & Shawmut Railroad Co.
Prescott & Northwestern Railroad Co.

Raritan River Railroad Co.
Richmond, Fredericksburg & Potomac Railroad Co.

St. Louis-San Francisco Railway Co.
- Quanah, Acme & Pacific Railway Co.

St. Louis Southwestern Railway
Seaboard Coast Line Railroad Co.
- Columbia, Newberry & Laurens Railroad Co.
- Gainesville Midland Railroad Co.

Soo Line Railroad Co.
- Sault Ste. Bridge Co.

Southern Pacific Transportation Co.
- Holton Interurban Railway Co.
- Northwestern Pacific Railroad Co.
- Petaluma & Santa Rosa Railroad Co.
- San Diego & Arizona Eastern Railway Co.
- Visalia Electric Railroad Co.

Southern Railway Co.
- Alabama Great Southern Railroad Co.
- Louisiana & Southern Railway Co.
- New Orleans Terminal Co.
- Atlantic & Eastern Carolina Railway Co.
- Camp Le Jeune Railroad Co.
- Central of Georgia Railroad Co.
- Cin., New Orleans & Texas Pacific Railway Co.
- Georgia Northern Railway Co. (The)
- Georgia Southern & Florida Railway Co.
- Live Oak Perry & South Georgia Railroad
- State University Railroad Co.
- Interstate Railroad Co.
- St. Johns River Terminal Co.
- Tennessee, Alabama & Georgia Railway Co.
- Tennessee Railway Co.
- Norfolk Southern Railway

Texas & Pacific Railway Co.
Abilene & Southern Railway Co.
Texas-New Mexico Railway Co.
Weatherford, Mineral Wells & Northwestern Railway
Texas Mexican Railway Co.

Union Railroad (Pittsburgh)
Union Pacific Railroad
Spokane International Railroad Co.
Mt. Hood Railway Co.

Vermont Railway, Inc.

Western Maryland Railway Co.
Western Pacific Railroad Co.
Sacramento Northern Railway
Tidewater Southern Railway
Western Railway of Alabama
Atlanta & West Point Railroad Co.
Winston-Salem Southbound Railway

ASSOCIATE MEMBERS

Alaska Railroad (ALASKA)
Aliquippa & Southern Railroad Co.
American Refrigerator Transit Co.
Apalachicola Northern Railroad Co.

Belfast & Mooseheld Lake Railroad Co.
Birmingham Southern Railroad Co.
Brooklyn Eastern District Terminal Railroad

California Western Railroad
Chestnut Ridge Railway Co.
Chicago Short Line Railway Co.
Chicago South Shore & South Bend Railroad
Chicago, West Pullman & Southern Railroad Co.
Cities Service Co. Railroad

Colorado & Wyoming Railway Co.
Cuyahoga Valley Railway Co.

Dardanelle & Russeville Railroad
Delray Connecting Railroad Co.
Duluth & Northeastern Railroad Co.
Durham & Southern Railway Co.

East Erie Commercial Railroad
East Jersey Railroad & Terminal Co.

Fruit Growers Express Co.

Genesee & Wyoming Railroad Co.
Grafton & Upton Railroad Co.
Graysonia, Nashville & Ashdown Railroad Co.
Great Western Railway Co.

Hartford & Slocomb Railroad—SSI Rail Corp.
Hillsdale County Railroad Co. Inc.

Johnstown & Stoney Creek Railroad Co.

La Salle & Bureau County Railroad Co.
Lake Terminal Railroad Co.
Louisiana & North West Railroad Co.

McKeesport Connecting Railroad Co.
Manufacturers' Junction Railway Co.
Minnesota, Dakota & Western Railway Co.
Monogahela Connecting Railroad Co.

New Orleans Public Belt Railroad
New Orleans Union Passenger Terminal
New York City Transit Authority
Newburgh & South Shore Railway Co.
Northhampton & Bath Railroad Co.

Pacific Fruit Express Co.
Pearl River Valley Railroad Co.
Port Authority of New York & New Jersey (The)

River Terminal Railway Co.
Roscoe, Snyder & Pacific Railway Co.

Sierra Railroad Co. (California)
Southern Indiana Railway, Inc.
Texas & Northern Railway Co.
Upper Merion & Plymouth Railroad Co.
*United States Railway Association
Washington Terminal Co.
Youngstown & Northern Railroad Co.

---

* U.S.R.A.—a body created to develop plans for Consolidated Rail Reorganization Act of 1973.

INDEX

CITATIONS

Cases Page

CITATIONS—Continued

Page

Statutes and Regulations:

Miscellaneous:

CITATIONS—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-558

RAYMOND MOTOR TRANSPORTATION, INC., *et al.*,
Appellants,

v.

ZEL S. RICE, *et al.*,
Appellees.

On Appeal from the United States District Court for the Western District of Wisconsin

---

BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE*

The Association of American Railroads as *amicus curiae* submits this brief in support of the decision by the District Court in *Raymond Motor Transp., Inc.* v. *Rice*, 417 F. Supp. 1352 (1976).

STATEMENT OF THE CASE AND OF THE INTEREST OF *AMICUS CURIAE*

The construction and maintenance of highways in this country is, and traditionally has been, primarily a func-

tion of the individual States, although since 1916 the Federal Government has financially aided the States in the construction of certain interstate highways.[1] So, too, it is the State that regulates the size and weight of motor vehicles permitted to use its highways, including interstate highways. Thus, like all other States, Wisconsin has enacted statutes regulating such matters as the maximum weight, width and length of motor vehicles operating on its highways. This litigation, of course, primarily is concerned with the validity, under the Federal Constitution, of Wisconsin's limitation on the maximum length of motor vehicles as applied to a trailer-train combination of a tractor and two trailers, referred to by appellants as twin trailers.

Wisconsin imposes, by statute, a general limitation prohibiting the operation upon its highways of "any single vehicle with an over-all length in excess of 35 feet or any combination of 2 vehicles with an over-all length in excess of 55 feet," except for "a combination of mobile home and towing vehicle" (which may have an overall length of 60 feet), "implements of husbandry temporarily operated upon a highway," and "[t]our trains consisting of 4 vehicles including the propelling motor vehicle . . . ." Wis. Stat. § 348.07. The operation of a vehicle or transportation of an article exceeding "the maximum limitations on size, weight or projection of load" without a permit is prohibited, Wis. Stat. § 348.25 (1), but such permits "exempt from the restrictions and limitations imposed by" statute "to the extent stated in the permit." Wis. Stat. § 348.25(2).

Insofar as statutory restrictions on length are concerned, exemption by permit is statutorily authorized in regard to "oversize mobile homes" (Wis. Stat. § 348.26 (4)), "to industries and to their agent motor carriers

[1] Act of July 11, 1916, 39 Stat. 355. See 23 U.S.C. §§ 101 *et seq.* for the current Federal aid legislation.

owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state" (Wis. Stat. § 348.27(4)), "to pipeline companies or operators or public service companies for the transportation of poles, pipe, girders and similar materials" (Wis. Stat. § 348.27(5)), "to companies and individuals hauling peeled or unpeeled pole-length forest products used in its business" (up to 65 feet) (*ibid.*), "to auto carriers operating 'haulaways' specially constructed to transport motor vehicles" (*ibid.*), "to the operation of [trailer] trains . . . which do not exceed a total length of 100 feet" (Wis. Stat. § 348.27(6); see, also, § 348.26(3)), "to licensed motor home transport companies . . . [,] manufacturers and dealers" for the transportation of "oversize mobile homes . . . in the ordinary course of their business" (Wis. Stat. § 348.27 (7)), and to "a vehicle combination of truck and full trailer of loads of pole length and pulpwood . . . for a distance not to exceed 3 miles from the Michigan-Wisconsin state line" (Wis. Stat. § 348.26(9)).

The Wisconsin Highway Commission, which issues such permits, prescribes the necessary "forms for applications" and "may impose such reasonable conditions . . . and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways." Wis. Stat. § 348.25(3). And, in general, such "permits shall be issued only for the transporting of a single article or vehicle which exceeds statutory size, weight or load limitations and which cannot reasonably be divided or reduced to comply with statutory size, weight or load limitations . . . ." Wis. Stat. § 348.25(4). This has been construed by the Highway Commission to authorize the issuance of a permit where division of the load would be economically, as well as physically, infeasible (A. 194-195, 199-200, 210-212, 243, 260-261). But each "permit specifies the maximum size and weight of the combina-

tion of vehicle and load which may be operated under the permit," and the "limitations on size are determined by considerations for the safety and reasonable mobility of other traffic using the highway as well as the special requirements for the object to be transported or the industry involved in the transportation" (A. 265).

The Wisconsin Highway Commission has provided by regulation that: "Trailer-train permits shall be issued only for the operation of vehicles used for the transporting of municipal refuse or waste, or for the interstate or intrastate operation without load of vehicles in transit from manufacturer or dealer to purchaser or dealer, or for the purpose of repair." § Hwy 30.14(3)(a). One of the "major factors" in that limitation is what the Commission deemed to be "legislative direction" (A. 250), apparently in rejecting numerous bills mandating increased maximum lengths for such vehicles (see A. 27). Hence, apart from the two exceptions made in that regulation, trailer trains or twin-trailer combinations having an overall length in excess of 55 feet are not permitted to operate on Wisconsin's highways. Accordingly, applications by appellants for permits to utilize twin-trailer combinations 65 feet in length for the transportation of general commodities across Wisconsin on two Interstate highways were denied (A. 14-15).

Appellants have neither contended nor shown that it is either physically or economically infeasible for them to divide their freight traffic so as to transport it over Wisconsin's highways in motor vehicles having an overall length of 55 feet or less. Rather, the bulk of the freight which they transport is composed of small lots weighing less than 10,000 pounds (A. 314-321, 361-364); and both appellants continue to operate in Wisconsin, using single rather than twin trailers or semi-trailer combinations of 55 feet or less (A. 307-308, 372). Indeed, while appellant

Consolidated introduced evidence that such methods of operation increased its costs by about $2 million annually (A. 289-290), its evidence also disclosed that it had a lower operating ratio (92.4) than the motor carrier industry as a whole (94.5) in 1970-74 (A. 304).

Various witnesses expressed opinions that 65-foot twin-trailer combinations are as safe as, or safer than, 55-foot semi-trailer combinations (A. 52-53, 56-57, 64-65, 70-71, 99, 141, 143, 157, 161-162, 169), but there was no evidence that they are as safe as 55-foot twin-trailer combinations. Moreover, there was evidence that the additional 10 feet in length increases the time required for a motorist to pass the 65-foot vehicles, as compared to 55-foot vehicles, up to a second or two (A. 61-62, 72, 93-94, 116, 144). If a passing car is traveling 10 mph faster, the passing time is increased by 0.68 second (A. 144), which increases the distance traveled while passing by more than 58 feet (A. 62). In wet weather, a passing automobile's windshield is exposed to splash and spray for that much longer in time and distance even though the density may be lighter (A. 101-102, 115-116). In addition, there was evidence that the greater the size of the larger vehicle involved in an accident, the higher the incidence of death among occupants of the smaller vehicle (A. 150-151). The average weight of the loads transported by appellants in twin trailers is substantially greater than that transported in semi-trailers (A. 323, 373). Increased weight increases the time and distance required to brake to a stop (A. 125-126), and weight is a significant factor in the severity of accidents (A. 144-145).

According to a map stipulated to by the parties (A. 277-278), as of November 1975 thirteen States (including Wisconsin) and the District of Columbia did not permit the operation of twin-trailer combinations on their

highways,[2] four others limited the length of such vehicles to 60 feet or less, three others permitted 65-foot twin-trailer combinations only on turnpikes, and the remainder permitted such vehicles with an overall length of 65 feet or more either generally or on designated highways which included Interstate highways. At least some of those who permit 65-footers have done so only in very recent years (A. 63, 78-79, 167, 169).

In a unanimous *per curiam* opinion, a three-judge District Court upheld the constitutionality of Wisconsin's restrictions on the length of twin-trailer combinations. J. S. App. 1a-23a. Wisconsin's "statutory and administrative scheme" (*id.*, 8a) neither explicitly nor implicitly discriminates against interstate commerce (*id.*, 7a-10a) and "the highways of the state of Wisconsin are controlled without regard to the interstate or intrastate nature of the commerce" (*id.*, 9a). Nor does any burden on interstate commerce outweigh the local benefits or interests served by the length limitation (*id.*, 10a-18a).

Under decisions of this Court, State statutes and regulations related to highway safety carry a strong presumption of validity (*id.*, 12a), and appellants did not overcome that burden or show that Wisconsin's 55-foot length limitation has "no permissible safety goal" (*id.*, 13a). For example, the greater time and distance required to pass the longer vehicles which appellants sought to operate subjects drivers of passing vehicles "to additional visual impairment" which "might be extreme under adverse weather or traffic conditions" (*id.*, 14a). Thus, after a "thorough review of the position of each party and the voluminous record," the lower court "must and does find that the total effect of the restrictions imposed by § Hwy 30.14(3)(a) are neither slight nor problematical as concerns highway safety" (*id.*, 15a).

[2] This obviously includes States, such as Wisconsin, that permit the operation of twin-trailer combinations having an overall length of 55 feet or less.

The lower court also held that Wisconsin's statutory and administrative scheme did not violate the equal protection clause of the Fourteenth Amendment (*id.*, at 18a-21a)—a holding which has not been questioned by appellants in their jurisdictional statement (see p. 4) or brief (see pp. 3-4).

As is shown in its motion for leave to file, the Association of American Railroads is an unincorporated trade association whose membership includes almost all of the nation's Class I railroads. The Association represents its members in a large variety of matters that are of interest or concern to many or all of them, including matters that affect competition between railroads and trucks. Several railroads operate in Wisconsin, and many others may participate in movements of freight that transit that State in moving from point of origin to point of destination. Moreover, appellants in effect are requesting this Court to overrule its many prior decisions establishing the primary right of the individual States to regulate the maximum size and weight of motor vehicles operating on their highways, and to interpret the Constitution as authorizing the courts to establish uniform federal maxima in regard to interstate highways, limited only if at all by the highest maximum established by any State. As the lower court noted (J.S. App. 17a), some States already allow 75-foot motor vehicles, and much the same case could be made for holding that other States must allow such vehicles as that Wisconsin must allow 65-foot vehicles. Even if not these appellants, there inevitably will be many trucking companies that operate interstate in both the State with the highest maximum (unless Alaska or Hawaii) and another State or States.

Many of the officers and employees of the Association and of its member railroads travel on interstate high-

ways in the course of their employment, and no doubt all of them do in their capacity as citizens, so that the safety and convenience of using such highways is a matter with which they are directly concerned. Moreover, as the record discloses (A. 284-285), allowance of 65-foot twin-trailer combinations would permit the motor carriers to compete more effectively with the railroads, and that also would be true of further increases in maximum allowable length or of increases in other State limitations upon the size or weight of motor vehicles.

This is a matter of particular concern to the Association and its member railroads. Unlike the motor carriers who operate over highways constructed, owned and maintained by the States, the railroads generally have borne, and now bear, the tremendous costs involved in constructing, owning and maintaining the roadbeds and tracks upon which their trains operate. If the right of the States to limit the maximum size and weight of motor vehicles should be crippled, the effect of this unjust discrimination upon the ability of the railroads to compete with motor carriers for freight traffic will be magnified. The perilous financial condition of much of the railroad industry, as is illustrated by the recent bankruptcies of the Penn Central and other eastern railroads, is well known. In 1976, the rate of return of all Class I railroads upon net worth was only 1.8%, as compared to a 14.8% rate of return for the common carrier trucking industry.[3] If appellants can succeed in this litigation in their effort to convert the Constitution into a mechanism for forcing the highest weight or size limitations on motor vehicles adopted by any State upon the other States, the effect upon the railroads and railroad transportation could be seriously adverse.

---

[3] Citibank (formerly National City Bank of New York) Monthly Economic Letter, April 1977.

For these reasons, this litigation is very important to the Association of American Railroads and to its member railroads, so that we feel compelled to provide the Court with our views as to why the decision below should be affirmed. This is particularly so since we also believe that those views will be helpful to the Court in reaching its decision in the case.

SUMMARY OF ARGUMENT

The power of the States to regulate the size and weight of motor vehicles operated in interstate commerce over the highways of the particular State was first considered and upheld by this Court in *Morris* v. *Duby*, 274 U.S. 135 (1927). Although the Court pointed out in that decision that the Congress could withhold that authority from the States by enacting supervening Federal legislation, the Congress had not done so then and it has not done so in the 50 years that have since elapsed. The Congress has been satisfied to leave the regulation of the size and weight of trucks to the States even though it has, since 1916, provided Federal aid to the States for the construction of interstate highways and has, since 1935, regulated many other aspects of motor freight transportation. The only exception is that, in enacting the Federal-Aid Highway Act of 1956, the Congress conditioned Federal aid for the construction of the Interstate Highway System upon a State not allowing maximum weights or widths exceeding a specified ceiling, because of concern that some States were going too far in increasing such maximums. As recently as 1974, in considering amendments to that Act, the Congress rejected proposals to convert the ceilings into mandatory Federal maximums and to establish a Federal standard for the length of trucks, and reiterated its view "that truck lengths should remain, as they have been, a matter for State decision." S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.

Appellants do not contend that Wisconsin's length limitation is contrary to Federal statutory law, but they do contend that Wisconsin has discriminated against interstate commerce in permitting certain exceptions to the general 55-foot limitation. As the court below concluded, however, Wisconsin's statutes and regulations regarding such exceptions or exemptions do not distinguish between interstate and intrastate commerce either in terms or in effect. Similar exceptions were held not to invalidate State regulations in *Sproles* v. *Binford*, 286 U.S. 374 (1932).

Appellants' principal contention is that Wisconsin's length limitation unreasonably burdens interstate commerce. They virtually concede, however, that their contention is contrary to prior decisions of this Court by urging that those decisions be overruled. Among those decisions is *Sproles* v. *Binford*, *supra* at 392, which held that a State provision "fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles" is not "open to objection." As this Court has recognized, the States build, own and maintain their highways, so that regulation of the use of those highways is peculiarly a matter of State concern. *S. C. Hwy. Dept.* v. *Barnwell Bros.*, 303 U.S. 177, 187-188 (1938). Limitations upon the sizes and weights of motor vehicles "have an important relation to the safe and convenient use of the highways," *Maurer* v. *Hamilton*, 309 U.S. 598, 609 (1940), and also may be utilized by a State to further its "vital interest in the appropriate utilization of the railroads which serve its people" by "foster[ing] a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain," *Sproles* v. *Binford*, *supra* at 394.

Hence, these "safety measures carry a strong presumption of validity," so that "even if there are alternative ways of solving a problem" the courts "do not sit to determine which of them is best suited to achieve a valid state objective." *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520, 524 (1959). The "adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice," and the "legislative judgment . . . is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." *S. C. Hwy. Dept.* v. *Barnwell Bros.*, *supra* at 191. Under these established principles, Wisconsin's length limitation plainly does not unreasonably burden interstate commerce. As the court below found, it serves an important safety function, and it is the type of regulation which this Court, in the cases cited above and others, has consistently recognized as being within the power of the States to impose.

Appellants contend that those prior decisions have been overruled *sub silentio* by *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), particularly insofar as the Court there stated that one of the factors considered in determining whether interstate commerce has been unreasonably burdened is whether the local purpose "could be promoted as well with a lesser impact on interstate activities." However, *Pike* involved a State regulation of a kind which "has been declared to be virtually *per se* illegal," and expressly distinguished "state legislation in the field of safety where the propriety of local regulation has long been recognized." *Id.*, at 143, 145. The holdings in *Barnwell Bros.* and *Bibb* that possible alternative measures will not be considered by the courts, where State regulation of the use of highways is involved, was based upon the strong presumption of validity which is afforded to such safety measures. Moreover, as the court below observed, there is no practical alternative to a length limitation, and the appellants' suggested alterna-

tive amounts in substance to a nullification of any limitations upon length.

Appellants' other reason for overruling the prior decisions of this Court is the purported change in the character and extent of motor freight transportation and of the interstate highway system since 1938 when *Barnwell Bros.* was decided. However, as was found in that case, interstate motor freight transportation and Federally-aided interstate highways also were very extensive in 1938. The view of this Court that regulation of the use of the highways is peculiarly a matter of local concern was not grounded upon any sparsity of interstate transportation or interstate highways, but upon the fact that the highways are built, owned and maintained by the States. The purported change in interstate highways upon which appellants rely is construction of the Interstate Highway System pursuant to the Federal-Aid Highway Act of 1956, but the Congress in enacting that statute made clear that the regulation of the length of trucks and similar matters was to continue to be a matter for the States to decide. And, the increase in the volume of motor freight transportation illustrates that interstate commerce has not been unreasonably burdened by State regulation, rather than that the prior decisions upholding such regulation should be overruled.

Indeed, the motor carriers' share of freight traffic as compared to the railroads' share also has increased substantially since 1938. If the courts should undertake to decide what size and weight limitations should be imposed, consideration of that factor might well dictate that those limitations should be made more restrictive. But, it seems clear that the courts should not undertake that task and should affirm the decision below upon the basis of the prior decisions of this Court.

ARGUMENT

Wisconsin's 55-foot limitation upon the length of twin-trailer combinations and other motor vehicles does not conflict with any Federal law, does not discriminate against interstate commerce and does not unreasonably burden interstate commerce. Its validity is supported by an unbroken line of decisions by this Court, commencing in 1927, and appellants' reasons as to why those decisions should be overruled are insubstantial.

I. Wisconsin's Restrictions upon the Length of Motor Vehicles Do Not Conflict with Federal Law or Discriminate Against Interstate Commerce.

1. *There are no conflicting Federal laws.* In *Morris* v. *Duby*, 274 U.S. 135 (1927), this Court upheld the constitutionality of an Oregon regulation limiting the maximum weight of motor vehicles to 16,500 pounds, as applied to trucks operating in interstate commerce over the Oregon segment of an interstate highway constructed with Federal financial aid under the Act of July 11, 1916 (39 Stat. 355), as then amended and supplemented by the Congress. In so doing, Chief Justice Taft stated for the Court (*id.*, at 143) that:

> "An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightfully prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens. . . . Of course, the State

may not discriminate against interstate commerce. . . ."

Just as the Congress in those early Federal-aid statutes did not withhold from a State the power to limit the weight and size of motor vehicles operating over its highways, the Congress did not do so when it enacted the Motor Carrier Act of 1935 (49 Stat. 543) to provide for Federal regulation of many other aspects of the transportation of freight by motor vehicles,[4] as this Court held in *Maurer* v. *Hamilton*, 309 U.S. 598 (1940). And, appellants do not contend that the Congress has withheld that power from the individual States in any other statute, as when it enacted the Federal-Aid Highway Act of 1956 (70 Stat. 374) increasing Federal aid to the State.[5]

Indeed, when it enacted the 1956 Act to aid construction by the States of the present system of Interstate Highways, the Congress expressed its concern "over the increase in weights and dimensions of vehicles operated over the highways of the United States," while "recognizing] that the regulation of weights and dimensions should be handled by the States." S. Rept. No. 350, 84th Cong., 1st Sess. (1955), at 14. Thus, the bill reported by the Senate Committee on Public Works "prohibit[ed] apportionment of funds authorized for the National System of Interstate Highways to any State in which such system may be used by vehicles with any dimension or weight in excess of the greater of (1) the maximum corresponding dimensions or weight permitted by" the existing State law or (2) "recommended" by a 1946 document issued by the American Association of State Highway Officials. *Id.*, at 23; see, also, *id.*, at 14-15.

[4] The Motor Carrier Act, as amended, is found at 49 U.S.C. §§ 301 *et seq.*

[5] The Federal-Aid Highway Act, as amended, is found at 23 U.S.C. §§ 101 *et seq.*

While the bill reported by the Senate Committee was passed by the Senate,[6] generally similar legislation was defeated in the House. See 101 Cong. Rec. 11717-11718 (1955). In the next session of the Congress, the Senate Committee reported a similar bill, including the provision putting a ceiling upon the size and weight maximums which could be allowed by the States in order to be eligible for Federal funding. See S. Rept. No. 1965, 84th Cong., 2d Sess. (1956), at 13-14. The Committee noted, among other things, that the provision was "designed to restrain further increases in weights and dimensions of vehicles using the Interstate System." *Id.*, at 16. By then, the House had passed a generally similar bill which, however, placed a ceiling only upon the maximum per-axle weight that could be allowed by the States. See 102 Cong. Rec. 7221-7222 (1956).[7]

On the floor of the Senate, Senator Kerr submitted an amendment in the form of a substitute for the provision in question, which he noted had been modified from its original form in a "series of discussions with" Senator Gore (the sponsor of and floor leader for the legislation) to add "certain limiting factors" so that "with these modifications he is willing to accept the amendment." *Id.*, at

[6] See 101 Cong. Rec. 7033 (1955). In the Senate debates, Senator Gore (the sponsor of the bill) stated, among other things, that the "committee did not feel that the Federal Government should seek to invade the jurisdiction of States in the exercise of their police power by entering the field of regulating or enforcing provisions relative to the size and weight of vehicles," but "has for some time been disturbed by continued increases in the weights and dimensions of vehicles operated over highways constructed in part with Federal funds," and concluded that "some action to encourage the States to do a better job in this field is appropriate." *Id.*, at 6717.

[7] See, also, H. Rept. No. 2022, 84th Cong., 2d Sess. (1956), at 10, which "recognizes that maximum weight limitations for vehicles using the highways are fundamentally a problem of State regulation," but considered some restriction on the maximum weight that a State could allow to be desirable.

9220-9221. The modified Kerr amendment went further than the House bill in placing ceilings upon maximum allowable overall weight and width, as well as upon maximum allowable weight per axle, but eliminated the ceilings upon maximum length and height contained in the provision reported by the Senate Committee.

In regard to elimination of the ceiling upon maximum allowable length, Senator Kerr explained "that in some of the Western States licenses are issued for the addition of another trailer to a truck, where there are long stretches of open road and little congestion of traffic." *Id.*, at 9221. His amendment would not "interfere with that," but on the other hand: "It is the thought in my mind and in the minds of those who agree that the limitations in this amendment will be adequate, because in those States where circumstances do not permit the longer vehicle, the State regulatory bodies have already established limits on the lengths of vehicles. This amendment does not interfere with that." *Id.*, at 9222. He did not believe that, "if longer trucks are permitted in certain States, there will be a movement in adjoining States to have longer trucks operate in those States," so that "we shall have longer trucks on the highways," because "that situation exists now" in that "neighboring States have different regulations, but they live side by side in peace, without conflict." *Id.*, at 9223.

Senator Gore stated that: "I thought I should yield on the height. I saw no necessity of yielding on the length. However, in order to reach a compromise with the Senator from Oklahoma [Mr. Kerr], realizing that axle placement and limitation would indirectly limit the length, and also believing that there was a total lack of uniformity as among the States, I agreed to that." *Id.*, at 9227. He further explained that: "What [the Kerr amendment] does not involve is the overall length, except indirectly. But when there is a limitation on both the per-axle weight

and overall weight, practically speaking, there is a limitation on the vehicle, unless there is an additional unit drawn behind. I hope that my State will never permit it. I hope no other State which does not now permit it will in the future permit additional units to be drawn behind a tractor." *Id.*, at 9224.

Both Senator Kerr and Senator Gore made clear that, even with respect to maximum weight and width as to which ceilings would be established, the "amendment does not violate the integrity of a State which has limitations more exacting than those provided in the bill" (Senator Kerr), so that if "the State limitations were less, the provision would have no effect within that State" and the "State law would remain in effect" (Senator Gore). *Id.*, at 9223, 9224. The Kerr amendment was adopted by the Senate (*id.*, at 9227), and was included unchanged in the bill reported by the Conference Committee [8] and enacted by the Congress. Hence, Section 108(j) of the Federal-Aid Highway Act of 1956 withheld Federal aid for the construction of Interstate highways from States in which the maximum allowable weight or width is "in excess of" amounts specified in that statute or "by appropriate State authority in effect on July 1, 1956, whichever is the greater." 70 Stat. 381.

In 1974, the Congress amended that provision (88 Stat. 2283), as codified in 23 U.S.C. § 127, to permit "moderate increases" in the allowable weight maximums. S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.[9] In rec-

---

[8] H. Rept. No. 2436, 84th Cong., 2d Sess. (1956), at 31-32.

[9] In the floor debates, Senator Bentsen explained that the increase in the allowable maximum weight was so limited in order "to make negligible the chances that trucks would have to be longer," and emphasized that: "In addition, the committee has left untouched the States' absolute power to regulate truck lengths. Truck lengths have never been written into Federal law, and the committee has no intention of changing that policy." 120 Cong. Rec. 30828 (1974).

ommending that legislation, the Senate Committee on Public Works stated that it "strongly believes that the ultimate decision on the weights of trucks is a matter for the States, and it wishes to stress that this legislation is not designed as a recommendation for State action." *Ibid.* "The Committee, in fact, rejected an Administration recommendation that the increases be mandatory on the States, for it is the States which have to determine for themselves—based on the needs of their own economies—the capacities of their road system to accommodate such changes and the costs that may result from the increases." *Ibid.* "Moreover, the Committee considered and rejected recommendations by the Administration and others to write into law for the first time a Federal guideline on the lengths of trucks. *The Committee believes that truck lengths should remain, as they have been, a matter for State decision.*" *Ibid.* (Emphasis added.) A factor in those determinations was "the question of safety," as "[h]eavier and larger trucks are said to overstress bridges, cause buffeting of smaller vehicles, and impose a psycological impact on other drivers." *Ibid.*

In short, while the Congress clearly has the power to enact legislation establishing national standards regarding the weight and size of motor vehicles operating in interstate commerce, and thus to preempt inconsistent State regulations on that subject, it generally has been content to leave that matter to the States in accordance with the constitutional standards which this Court enunciated in *Morris* v. *Duby* and in numerous subsequent decisions which we discuss at pp. 23-30 *infra*. The Congress has been concerned about the ever-increasing maximums allowed by some States, and imposed ceilings which were intended to inhibit such increases as to weight and width in the Federal-Aid Highway Act of 1956. While the Congress refrained from placing a ceiling on maximum length, in the belief that combinations in which an

additional trailer is attached might not be harmful "in some of the Western States" where "there are long stretches of open road and little congestion of traffic," it was the hope and expectation of the Congress that other States would not allow such combinations so as to have "longer trucks on the highways." And, the Congress has made clear its belief "that truck lengths should remain, as they have been, a matter for State decision."

Consequently, there is no basis for a contention that Wisconsin's length limitation is inconsistent with or has otherwise been preempted by Federal statutory law. Indeed, appellants do not make such a contention, but they do contend that the creation of the Interstate Highway System pursuant to the Federal-Aid Highway Act of 1956 is a reason why this Court should overrule its decisions upholding the constitutional right of the States to regulate the weight and size of motor vehicles, in the absence of inconsistent Federal statutes. As we show later (pp. 38-42, *infra*), the above demonstration that the Congress did not intend any such consequence when it enacted the 1956 statute is but one of the reasons why that contention by appellants should be rejected.

2. *There is no discrimination against interstate commerce.* Appellants do contend that Wisconsin has discriminated against interstate commerce (Brief, at 14-24), but their contention in that regard is so lacking in substance that it can fairly be characterized as frivolous. Their contention is based upon the fact that Wisconsin has made certain exceptions to its general weight and size limitations, either by statute or pursuant to administrative permits. But the statutes and regulations do not distinguished in that regard between interstate and intrastate commerce and, as the court below concluded, "[i]n practical effect, it seems apparent that the highways of the state of Wisconsin are controlled without regard to

the interstate or intrastate nature of the commerce." J.S. App. 9a.

Appellants do not suggest that the exemptions are limited to intrastate commerce except for the authorization, in Wis. Stat. 348.27(4), of permits "to industries and to their agent motor carriers owning and operating oversize vehicles in connection with interplant, and from plant to state line, operations in this state . . . ." See Brief, at 19-21. That statutory provision is not limited on its face to Wisconsin industries or agent motor carriers, and it should not be interpreted in such a manner as to make it unconstitutional if it properly can be construed otherwise. *Sproles* v. *Binford*, 286 U.S. 374, 392 (1932). And, the stated policy of the Wisconsin Highway Commission is that permits "are issued on the basis of policies established by the statutes and by the Commission without regard to whether the applicant is a resident of Wisconsin or not." A. 264; see J.S. App. 9a n. 8.

If the Wisconsin Highway Department has deviated from that policy in regard to interplant permits, as appellants contend (Brief, at 19-21), either in the one instance to which they refer or generally, the proper remedy would be to invalidate that particular discrimination, not the entirely separate limitation upon permits for trailer trains. In any event, appellants are not "industries" or "their agent motor carriers operating vehicles in connection with interplant, and from plant to state line, operations," and they have not sought or been denied an interplant permit. The "alleged discrimination" is one which, "if it exists, does appellees no harm" and of which they, therefore, have no standing to complain. *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 595-596 (1939). See also, *e.g.*, *Morf* v. *Bingaman*, 298 U.S. 407, 413 (1936); *Lattavo Bros.* v. *Hudock*, 119 F. Supp. 587, 591 (W.D. Pa., 1953), aff'd *per curiam*, 347 U.S. 910 (1954).

Appellants also argue that the exemptions discriminate against interstate commerce because they benefit a substantial portion of Wisconsin's industries (Brief, at 21-24), producing about 32.78% of the total value of Wisconsin manufacturing shipments, while those "industry groups create only 18% of all manufacturing shipments" nationwide (Brief, at 22 n. 30). But all shipments of those Wisconsin industries are not shown or claimed to have been by motor vehicles operating pursuant to overweight or oversize permits, and there is no evidence of any disproportion between Wisconsin industries and out-of-state industries insofar as the issuance of such permits is involved.

In any event, "[p]ermits are issued" by Wisconsin "because there are many types of loads that cannot reasonably be divided and moved within statutory size and weight limitations." A. 270; see p. 3, *supra*. The Texas statute involved in *Sproles* v. *Binford*, *supra*, similarly authorized the State Highway Department to "grant permits, for ninety days, for the transportation 'of such overweight or oversize or overlength commodities as can not be reasonably dismantled,' or for the operation 'of super-heavy and oversize equipment' for the transportation of such commodities . . . ." 286 U.S., at 380. In upholding the statutory and administrative scheme of Texas for restricting the size and weight of motor vehicles, the Court concluded, among other things, that in "the instant case, there is no discrimination against interstate commerce . . . ." *Id.*, at 390.[10]

---

[10] Exemptions or other classifications in regard to State weight and size limitations generally have been considered to give rise to questions under the equal protection clause, rather than raising a question as to discrimination against interstate commerce. See, *e.g.*, *Sproles* v. *Binford*, *supra* at 391-396; *Hicklin* v. *Coney*, 290 U.S. 169, 173-177 (1933); *Department of Pub. Safety* v. *Freeman Ready-Mix Co.*, 292 Ala. 380, 295 So.2d 242, 250 (1974), app. dis. for want of substantial federal question, 419 U.S. 891 (1974). "The question

Indeed, appellants stated in their jurisdictional statement (p. 12, n. 12) that they take "no exception to permitted over length uses that are uses of necessity," and complain only insofar as "permits are issued for economic reasons rather than physical necessity." But it is not irrational for Wisconsin to allow for the economic, as well as the physical, infeasibility of complying with its general weight or size limits, and such a policy would not discriminate against interstate commerce even if it should benefit local industries more than out-of-state industries (which has not been shown to be true here). In *Firemen* v. *Chicago, R.I. & P. R. Co.*, 393 U.S. 129, 140-142 (1968), this Court held that State "full crew" laws did not discriminate against interstate commerce, even though "the effect of the mileage exemptions was to free all of the State's 17 intrastate railroads from the coverage of the Acts, while 10 of the 11 interstate railroads are subject to the 1907 Act, and eight of them are subject to the 1913 Act." *Id.*, at 141. The Court pointed out that "the difference in treatment . . . might have a rational basis," including the fact that "the legislature could also conclude that the smaller railroads would be less able to bear the cost of additional crewmen, even though the total addi-

---

is whether the classification adopted lacks a rational basis." *Sproles* v. *Binford*, *supra* at 396. The court below rejected an equal-protection argument by appellants, and they have not contested that ruling in this Court. We note that "contentions that many different kinds of classifications employed constituted invalid discrimination have been almost universally rejected," including "contentions of illegal discrimination with respect to classifications differentiating between different types of vehicles, vehicles used in different types of businesses, freight motor carriers and railroads, trucks and passenger busses, private vehicles and government vehicles, private vehicles and those licensed as common carriers, various combinations of tractors and trailers, conventional hauls and short hauls for special purposes, conventional hauls and hauls between common carrier terminal points, etc." Annotation, *Highways—Weight Limitations*, 75 A.L.R. 2d 376, 389-390 (1961). See, also Kahn, *Federal Limitations upon State Motor Carrier Taxation and Regulation*, 32 Temp. L. Q. 61, 74-75 (1958).

tional cost would of course tend to be smaller in the case of the smaller companies." *Id.*, at 141, 142.

We submit, therefore, that Wisconsin has not discriminated against interstate commerce. Both its general restriction upon the length of motor vehicles, and the exceptions which it has made, are applicable to interstate and intrastate commerce alike, both in terms and in fact.

II. Wisconsin's Restrictions upon the Length of Motor Vehicles Do Not Unreasonably Burden Interstate Commerce.

As it appears to us, the only substantial issue in this case is whether Wisconsin has unreasonably burdened interstate commerce, and that issue is substantial only because appellants have requested this Court to overrule a series of prior decisions which clearly support the decision below in this case. We think it plain, however, that those prior decisions establish sound constitutional law, and that appellants' reasons for urging that they be overruled are inadequate.

1. *The decision below is supported by prior decisions of this Court.* This Court first considered the constitutionality of State restrictions upon the weight or size of motor vehicles in *Morris* v. *Duby*, 274 U.S. 135 (1927), to which we have already referred on pp. 13-14, *supra*. In unanimously holding that Oregon's weight limitation did not unreasonably burden interstate commerce, this Court stated (*id.*, at 144) that:

> "'With the increase in number and size of the vehicles used upon a highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the ab-

sence of legislation by Congress which deals specifically with the subject. . . .' [Quoting *Buck* v. *Kuykendall*, 267 U.S. 307, 315 (1925).]

"The mere fact that a truck company may not make a profit unless it can use a truck with load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable. That it prevents competition with freight traffic on parallel steam railroads may possibly be a circumstance to be considered in determining the reasonableness of such a limitation, though that is doubtful, but it is necessarily outweighed when it appears by decision of competent authority that such weight is injurious to the highway for the use of the general public and unduly increases the cost of maintenance and repair. . . ."

In *Sproles* v. *Binford*, 286 U.S. 374 (1932), this Court established that the effect upon competition between motor carriers and railroads is a separate reason, in addition to the promotion of "safety upon its highways and the conservation of their use" (*id.*, at 390), for upholding the constitutionality of State restrictions upon the size and weight of motor vehicles. That case involved comprehensive restrictions by Texas upon the length, width, height and weight of motor vehicles, subject to several exceptions or exemptions. Chief Justice Hughes stated (*id.*, at 394-395), for a unanimous Court, that:

> "It is said that [an] exception was designed to favor transportation by railroad as against transportation by motor trucks. If this was the motive of the legislature, it does not follow that the classification as made in this case would be invalid. The State has a vital interest in the appropriate utilization of the railroads which serve its people, as well as in the proper maintenance of its highways as safe and convenient facilities. The State provides its highways and pays for their upkeep. Its people make railroad

transportation possible by the payment of transportation charges. It cannot be said that the State is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the State the right to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain. . . . The limitation of the length of vehicles, covered by the exception, to 55 feet, and of the weight of their loads to 14,000 pounds, must be taken to be within the legislative discretion for the same reasons as those which were found to sustain the general limitation of size and weight to which the exception applies."

See, also, *Stephenson* v. *Binford*, 287 U.S. 251, 271-274 (1932).

In a holding that is particularly relevant to this case, the Court in *Sproles* also concluded that a provision "fixing approximately the same limit of length for individual motor vehicles and for a combination of such vehicles" is not "open to objection." 286 U.S., at 392. "If the State saw fit in this way to discourage the use of such trains or combinations on its highways, we know of no constitutional reason why it should not do so." *Ibid.* See, also, *Morf* v. *Bingaman*, 298 U.S. 407, 411 (1936), which, in holding that permit fees for automobile caravans (one towing the other) did not unreasonably burden interstate commerce, pointed out that "the length of the caravans," among other things, "increase the inconvenience and hazard to passing traffic." Accord, *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 593 (1939).

The validity of State restrictions upon the size and weight of motor vehicles next came before the Court in

S.C. Hwy. Dept. v. *Barnwell Bros.*, 303 U.S. 177 (1938). Among other things, South Carolina limited the width of trucks and semi-trailers to 90 inches and their weight, including load, to 20,000 pounds. The trial court had held that those restrictions unreasonably burdened interstate commerce. It found, among other things, "that interstate carriage by motor trucks has become a national industry; that from 85% to 90% of the motor trucks used in interstate transportation are 96 inches wide and of a gross weight, when loaded, of more than ten tons; that only four states prescribe a gross weight as low as 20,000 pounds; . . . that compliance with the weight and width limitations demanded by the South Carolina Act would seriously impede motor truck traffic passing to and through the state and increase its costs;" and "that it has no reasonable relation to safety of the public using the highways . . . ." *Id.*, at 182-183. All other States "permit[ted] a width of 96 inches, which is the standard width of trucks engaged in interstate commerce." *Id.*, at 184.

This Court unanimously reversed and upheld the constitutionality of those size and weight restrictions, in a comprehensive opinion written by Mr. Justice (later Chief Justice) Stone. It must be read in its entirety to be appreciated fully, but of particular note is the Court's conclusion (*id.*, at 187-188) that:

> ". . . [T]he present case affords no occasion for saying that the bare possession of power by Congress to regulate the interstate traffic forces the states to conform to standards which Congress might, but has not adopted, or curtails their power to take measures to insure the safety and conservation of their highways which may be applied to like traffic moving intrastate. Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is as inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large numbers within as well as without the state is a safeguard against their abuse.
>
> ". . . With respect to the extent and nature of the local interests to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulation of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce." [11]

While the Congress "may, by legislation designed to secure uniformity or in other respects to protect the national interest in the commerce, curtail to some extent the state's regulatory power," that "is a legislative, not a judicial function . . . ." *Id.*, at 190. So, too, "in reviewing a state highway regulation where Congress has not acted, a court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied of those that are possible, or to choose that one which in its opinion is best adapted to all the diverse interests affected." *Ibid.* Moreover, since "the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice, its constitutionality is not to be determined by

---

[11] See also, *e.g.*, *Railway Express* v. *New York*, 336 U.S. 106, 111 (1949); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, 783 (1945).

weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard. . . . Being a legislative judgment it is presumed to be supported by facts known to the legislature unless facts judicially known or proved preclude that possibility." *Id.*, at 191.

Maurer v. *Hamilton*, 309 U.S. 598 (1940), upheld the constitutionality of a Pennsylvania statute prohibiting any part of a trailer from protruding over the cab of the carrier vehicle or over the head of the driver, which this Court regarded as being "in both a technical and practical sense . . . a regulation of weight and size of the loaded motor vehicle" (*id.*, at 610). The Court, in another unanimous opinion written by former Chief Justice Stone, brushed aside objections based upon the commerce and due process clauses, in view of the explication in *Barnwell Bros.* of the "standards which define the state power to prescribe regulations adapted to promote safety upon its highways and to insure their conservation and convenient use by the public." *Id.*, at 603-604. In the course of holding that the Congress, in enacting the Motor Carrier Act, had not preempted State laws regulating the size and weight of motor vehicles (see p. 14, *supra*), the Court pointed to legislative history of that Act recognizing that "sizes and weights" are "an extremely important matter from the standpoint of public safety and convenience" (*id.*, at 609), and went on to note (*ibid.*) that "[t]his Court has also had occasion to point out that the sizes and weights of automobiles have an important relation to the safe and convenient use of the highways, which are matters of state control."

Bibb v. *Navajo Freight Lines*, 359 U.S. 520 (1959), involved an Illinois statute requiring the use of a "contour" mudguard on trucks and trailers operated on Illinois highways. The statute thus prohibited "the conventional or straight mudflap" which was legal in the other States and required by Arkansas. It thus "rendered the use of the same motor vehicle equipment in both States impossible." *Id.*, at 523. The trial court found that it was "conclusively shown that the contour mud flap possesses no advantages over the conventional or straight mud flap" and that "there is rather convincing testimony that use of the contour flap creates hazards previously unknown to those using the highways." *Id.*, at 525.

While this Court affirmed a holding that the Illinois statute unreasonably burdened interstate commerce, it did not repudiate the principles established in its prior decisions as discussed above. Rather, the opinion by Mr. Justice Douglas regarded the case as being "one of those cases—few in number—where," under those established principles, "local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce." *Id.*, at 529. Thus, the Court reiterated that the "power of the State to regulate the use of its highways is broad and pervasive," even though it "may have an impact on interstate commerce" in view of the "peculiarly local nature of this subject of safety" (*id.*, at 523, citing *Barnwell Bros.*, *Maurer* and *Sproles*). The Court affirmed that "[t]hese safety measures carry a strong presumption of validity," so that even if "there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective." *Id.*, at 524.

Despite the findings by the trial court that contour mudguards possessed no safety advantages and may create additional hazards, and as to the cost of complying with the Illinois statute, "we would have to sustain the law under the authority of the *Sproles*, *Barnwell* and *Maurer*" cases, if that were all that were involved. *Id.*,

at 526. The "matter of safety" is "one essentially for the legislative judgment" and the regulations upheld in the prior cases also made the operation of motor vehicles more costly. *Id.*, at 525-526. The *Bibb* case presented a "different issue," however, because of the "conflict" between the Illinois statute and the Arkansas regulation "making it necessary . . . for an interstate carrier to shift its cargo to differently designed vehicles once another state line was reached," and thus interfering with "interline" operations. *Id.*, at 526-527.

In addition to the decisions discussed above, this Court has summarily upheld a number of decisions by lower courts holding that State restrictions upon the size or weight of motor carriers did not unreasonably burden interstate commerce.[12] There cannot be any real question about the correctness of the decision below in this case, if those prior decisions by this Court are not repudiated. Indeed, appellants do not contend otherwise in this Court. Although appellants in the court below "place[d] much reliance upon the decision in" *Bibb* (J.S. App. 16a), they now urge that this Court in *Bibb* "misled" the lower court by confirming, rather than repudiating, the principles established by *Barnwell Bros.* and other prior decisions (Brief, at 45).

We shall demonstrate that appellants have not advanced any substantial reason for overruling this Court's prior decisions, but it hardly can be denied that they

[12] *Department of Pub. Safety* v. *Freeman Ready-Mix Co.*, 292 Ala. 380, 295 So.2d 242 (1974), app. dis. for want of a substantial federal question, 419 U.S. 891 (1974); *Lattavo Bros.* v. *Hudock*, 119 F. Supp. 587 (W.D. Pa., 1953), aff'd *per curiam*, 347 U.S. 910 (1954); *Whitney* v. *Johnson*, 37 F. Supp. 65 (E.D. Ky., 1941), aff'd *per curiam*, 314 U.S. 574 (1941); *Darnell Trucking Co.* v. *Simpson*, 122 W. Va. 656, 12 S.E.2d 516 (1940), app. dis. for want of a substantial federal question, 313 U.S. 549 (1941); *Philadelphia-Detroit Lines* v. *Simpson*, 37 F. Supp. 314 (S.D. W. Va., 1940), aff'd *per curiam*, 312 U.S. 655 (1941).

were wise in urging that course rather than attempting to convince this Court that Wisconsin's restriction upon the length of motor vehicles constitutes one of the "few" instances in which "local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce," to utilize the language of this Court in *Bibb*. See p. 29, *supra*. By so doing, appellants at least achieved plenary review by this Court, rather than the summary disposition that otherwise would have been appropriate.

While appellants contend (Brief, at 34-39) that Wisconsin's restriction of twin-trailer combinations and other motor vehicles to a maximum length of 55 feet does not promote safety, the trial court found that "the total effect of the restrictions imposed" by Wisconsin "are neither slight nor problematical as concerns highway safety" (see pp. 6-7, *supra*). In contrast, the trial courts in *Barnwell Bros.* and *Bibb* found that the restrictions at issue in those cases did not promote safety and, in *Bibb*, that the restriction might well create additional hazards (see pp. 26, 29, *supra*). Indeed, appellants have not even demonstrated that the finding below in this case is clearly erroneous,[13] much less that the record precludes any "possibility" (see pp. 27-28, *supra*) that length has any relation to safety so as to permit the courts to interfere with the legislative judgment in that regard. The increased hazards and inconvenience to other motorists of an additional 10 or more feet in length of monster trucks is obvious, as well as having support in the record (see p. 5, *supra*). When the additional length resulting from coupling two automobiles together causes a problem in that regard, as this Court has recognized (see p. 25, *supra*), how could it be impossible that coupling two 27-foot trailers behind a tractor for a total length of

[13] See Rule 52(a) F. R. Civ. P.

65 feet has no relationship to the safety or convenience of other motorists? [14]

So, too, Wisconsin's restriction on the length of motor vehicles is not different in nature from the size and weight restrictions that the courts have repeatedly upheld. Unlike Illinois' requirement of a contour mudguard, that restriction does not prohibit the use of equipment which is required by some other State or otherwise prevent motor carriers operating over Wisconsin's highways from interchanging with vehicles that satisfy the requirements of other States. Indeed, appellants do continue to operate in interstate commerce over Wisconsin's highways, by either separating their twin trailers or utilizing semi-trailer combinations for the entire interstate journey, and nothing in Wisconsin's law prevents them from using twin-trailer combinations having an overall length of 55 feet or less. See p. 4, *supra*.

We submit, therefore, that there is no basis for an argument that Wisconsin's restriction on the length of motor vehicles unreasonably burdens interstate commerce, if this Court adheres to its consistent course of decisions since 1927 in regard to State regulation of the size and weight of motor vehicles. And, in fact, appellants have not argued to the contrary in this Court.

---

[14] Appellants contend (Brief, at 42) that the court below, in recognizing that this "Court has on several occasions equated limitations on vehicle size to public safety," was "relying upon . . . presumptions rather than examining the facts of the particular case . . . ." However, the lower court's finding "that the total effects of the restrictions imposed" by Wisconsin "are neither slight nor problematical as concerns highway safety" was, as it stated, based upon a "thorough review of the position of each party and the voluminous record in this proceeding . . . ." J.S. App. 15a. That court can hardly be faulted for also noting that its finding is confirmed by observations of this Court. And, of course, that court was fully justified in affording to the Wisconsin regulations the "strong presumption of validity" to which they are entitled by *Bibb* and other decisions of this Court. J.S. App. 12a.

2. *This Court should not overrule its prior decisions.* Appellants expressly urge this Court to overrule its *Barnwell Bros.* decision and to repudiate the principles enunciated and applied in *Bibb* (Brief, at 44-49), but obviously their arguments would require the overruling or repudiation of the entire line of cases dealing with State regulation of the size and weight of motor vehicles, commencing with the 1927 decision in *Morris* v. *Duby*.[15] The opinions in those cases were written by some of the most distinguished jurists that have served on this Court, including three former Chief Justices (Taft, Hughes and Stone), and a dissent was not registered in any of them (only in *Bibb* was there a separate concurring opinion). Although those decisions recognize that the Congress may enact controlling Federal regulations of the size and weight of motor vehicles operating in interstate commerce, preempting inconsistent State regulations, the Congress has not seen fit to do so. Obviously, this Court should not lightly overrule or repudiate that consistent line of decisions which has been followed and relied upon for some 50 years.

Appellants suggest only two reasons for overruling or repudiating those prior decisions. They urge that those decisions already have been overruled or repudiated, *sub silentio*, by the decision in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970) (see Brief, at 44-45), and that the character of motor carrier transportation and of the highways has changed since *Barnwell Bros.* was decided (see Brief, at 46-47). Neither of those contentions has any substance.

---

[15] Rather incredibly, appellants also suggest that this Court has repudiated (Brief, at 12-13) or "abandoned" (Brief, at 39) the principles adopted in the landmark decision in *Cooley* v. *Board of Wardens*, 53 U.S. (12 How.) 299 (1851). This Court, of course, has not perceived any such abandonment. See, *e.g.*, *Hunt* v. *Washington State Apple Advertising Commission*, —— U.S. ——, 45 U.S.L.W. 4746, 4751 (1977); *Goldstein* v. *California*, 412 U.S. 546, 553-554 (1973); *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 625 (1973).

The *Pike* decision invalidated, as an unreasonable burden upon interstate commerce, an Arizona statute requiring "all cantaloupes grown" in Arizona to be "packed . . . in standard containers" in that State, as applied to prohibit the transportation of uncrated cantaloupes grown in Arizona to a nearby California point for packing and processing. *Id.*, at 138. That application of the statute involved, on the one hand, "the State's tenuous interest in having the company's cantaloupes identified as originating in *Arizona*," and, on the other hand, "the requirement that the company build and operate an unneeded $200,000 packing plant in the State." *Id.*, at 145. But it was the nature of the burden which was determinative of the Court's decision. Thus, the Court stated (*ibid.*) that:

> "The nature of that burden is, constitutionally, more significant than its extent. For the Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere. Even where the State is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually *per se* illegal. . . ."

A State's interest in the safety of its highways is not in any way "tenuous." Rather, "[i]t is difficult at best to say that financial losses should be balanced against the loss of lives and limbs of workers and people using the highways," *Firemen* v. *Chicago, R. I. & P. R. Co.*, 393 U.S. 129, 140 (1968). And, State laws regulating the size and weight of motor vehicles have never been "viewed with particular suspicion" or "declared to be virtually *per se* illegal." Rather, "[t]hese safety measures carry a strong presumption of validity when challenged in court." *Bibb*, *supra* at 524. Thus, rather than repudiating or overruling its decisions in that regard, the Court in *Pike* carefully pointed out (397 U.S., at 143) that:

> "We are not, then, dealing here with 'state legislation in the field of safety where the propriety of local regulation has long been recognized,' or with an Act designed to protect consumers in Arizona from contaminated or unfit goods. . . ."

It seems plain, therefore, that *Pike* easily is distinguishable from *Morris*, *Sproles*, *Maurer*, *Barnwell Bros.*, *Bibb* and similar cases dealing with State regulation of the size or weight of motor vehicles, and does not purport to overrule or repudiate those cases. Appellants (see Brief, at 11) rely, however, upon a generalized statement of principle in *Pike* (397 U.S., at 142) that:

> "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. . . ."

As we have demonstrated and the court below held, Wisconsin's restriction on the length of motor vehicles regulates "evenhandedly" (see pp. 19-23, *supra*) and "effectuates a legitimate local public interest" (see pp. 23-32, *supra*). The prior decisions by this Court do consider, and indeed stress, the "nature of the local interest involved" (see pp. 23-30, *supra*), and the lower court expressly applied (J.S. App. 10a) the "balancing approach" referred to in *Pike* and inherent in decisions such as *Bibb*. The only portion of the above-quoted formulation in *Pike* which could be said to be inconsistent with the decisions by this Court upon which we rely is the statement that the "burden that will be tolerated" de-

pends in part upon whether the local purpose "could be promoted as well with a lesser impact on interstate activities." In *Barnwell Bros.*, the Court said that "in reviewing a state highway regulation where Congress has not acted, a court is not called upon, as are state legislatures, to determine what, in its judgment, is the most suitable restriction to be applied of those that are possible, or to choose that one which in its opinion is best adapted to all the diverse interests affected." 303 U.S., at 190. And, in *Bibb* the Court similarly stated that even if "there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective." 359 U.S., at 524. See pp. 27, 29, *supra.*

Of course, it is this seeming inconsistency between general language appearing in *Pike* and the views expressed in *Barnwell Bros.* and *Bibb* upon which appellants primarily rely (Brief, at 44-45) in contending that *Pike* has overruled or repudiated those prior decisions by this Court, and that the court below therefore erred in following those decisions. However, this Court already has rejected a contention that the reference in *Pike* to whether the local interest "could be promoted as well with a lesser impact on interstate commerce" establishes a rigid general rule to be applied in all circumstances in which it is alleged that interstate commerce has been unreasonably burdened. *Hughes* v. *Alexander Scrap Corp.*, 426 U.S. 794, 804-806 (1976).[16]

[16] In *Hunt* v. *Washington State Apple Advertising Commission*, —— U.S. ——, 45 U.S.L.W. 4746, 4751 (1977), the Court stated it is "[w]hen discrimination against commerce of the type we have found is demonstrated," that "the burden falls on the State to justify it both in terms of local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives, adequate to preserve the local interests at stake," citing *Pike* as well as other similar decisions. In that case, as in *Pike*, the State statute favored local businesses at the expense of out-of-state businesses. See 45 U.S.L.W., at 4751. In contrast, Wisconsin has not discriminated between intrastate and interstate businesses in limiting the length of motor vehicles.

Moreover, it is because "[t]hese safety measures carry a strong presumption of validity when challenged in court" that, "[i]f there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective," but leave such "[p]olicy decisions . . . for the state legislature." *Bibb, supra* at 524; *Firemen* v. *Chicago, R. I. & P. R. Co., supra* at 142. As we noted above, this Court in *Pike* made clear that it was not concerned with "state legislation in the field of safety . . . ."

Furthermore, as the court below noted, "[a]s a practical matter, no less intrusive alternative to length limitations on commercial vehicles seems possible." J.S. App. 12a n. 10. That comment is illustrated and reinforced by appellants' contention (Brief, at 44-45) that "a less intrusive alternative is available" as they "do not seek a holding that the general limitation of vehicle length is invalid," but only "seek to invalidate that part of the permit system which prevents their permit applications from being considered on an equal basis with other applications." But, of course, if Wisconsin's regulation prohibiting the issuance of trailer-train permits authorizing an overall length in excess of 55 feet is invalidated as to appellants, it could hardly be upheld as to other interstate motor carriers. And, as the lower court pointed out (J.S. App. 17a) the same arguments could be made in regard to permits allowing the 75-foot combinations allowed by some States as appellants have made in regard to the 65-foot combinations that they now desire to operate. In short, appellants' "alternative" amounts in substance to the invalidation of all State limitations upon the length of motor vehicles operating in interstate commerce or on interstate highways, at least insofar as a greater length is allowed by some other State. See p. 7, *supra.*

Appellants' other reason for overruling or repudiating the prior decisions of this Court regarding State regulation of the size and weight of motor vehicles is equally insubstantial. They contend that in 1938, when *Barnwell Bros.* was decided, State regulation "was principally one of local commerce" and interstate motor transportation "was in its infancy," while such interstate transportation since has "increased dramatically" (Brief, at 46).[17] They also say that roads in 1938 were "largely financed by state money" and "served principally as routes for local commerce," while the Interstate Highway System "is designed to provide a national and regional highway system," is "principally funded by federal money," and is constructed in accordance with Federal "standards," citing the Federal-Aid Highway Act of 1956 as codified in 23 U.S.C. §§ 101 *et seq.* (Brief, at 46-47, and n. 42 thereto.)[18] Thus, they argue that "Barnwell's statement that regulation of the use of highways was 'peculiarly a local concern' was doubtful in 1959 [when *Bibb* was decided] and no longer true today as applied to all highways" (Brief, at 47).

Appellants' characterizations very much understate the extent of interstate motor carrier transportation in 1938 and of the highways used for that purpose. For example, such transportation had become so extensive and important by 1935 that the Congress enacted the Motor Carrier Act to regulate federally many aspects of the business, estimating at the time "that over 200,000 separate trucks would be subject to the federal regulation." *Maurer* v. *Hamilton*, *supra* at 605 n. 4. While increased by the Federal-Aid Highway Act of 1956, Federal financial aid to the States for the construction

---

[17] Appellants concede that this was also true in "1959, when *Bibb* was decided . . . ."

[18] Appellants also concede that the Interstate Highway System was "begun before *Bibb* . . . ."

of interstate highways has existed since 1916. See pp. 2, 13, *supra*. This Court in *Barnwell Bros.* did not dispute the findings by the trial court "that there is a large amount of motor truck traffic passing interstate in the southeastern part of the United States, which would normally pass over the highways of South Carolina, but which will be barred from the state by the challenged restrictions if enforced;" that "interstate carriage by motor trucks has become a national industry;" and that South Carolina's restrictions applied to motor vehicles operating over "a connected system of highways which have been improved with the aid of federal money grants, as a part of a national system of highways" (303 U.S., at 182, 183).

In any event, appellants' arguments are completely beside the point. All of the prior decisions by this Court upon which we rely were specially concerned with the application of State size or weight restrictions to interstate motor transportation over interstate highways. There was no contention, or basis for a contention, that those restrictions unreasonably burdened *interstate* commerce insofar as they applied to *intrastate* motor transportation. It was not some lack, or relative sparsity, of interstate motor transportation or interstate highways which led this Court, in *Barnwell Bros.*, to state that "[f]ew subjects of state regulation are so peculiarly of local concern as is the use of state highways." 303 U.S., at 187. Rather, as the Court proceeded to explain (*ibid.*), "[u]nlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions," so that the "state has a primary and immediate concern in their safe and economical administration;" and the fact that State regulations "affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse." See pp. 26-27, *supra*. Those factors have not changed since 1938.

Appellants' reliance upon the development of the Interstate Highway System, with the assistance of Federal funds and in accordance with Federal standards under the Federal-Aid Highway Act of 1956, is both ironic and illustrative of the weakness of their arguments. When that legislation was being considered, spokesmen for the motor-carrier industry urged that "[r]egulation of sizes and weights of trucks should be the function of the States rather than of the Federal Government." [19] And, the Congress was concerned with the possibility that the States would increase the allowable maximums, rather than that they would be too restrictive. Thus, while the Congress made clear its general intent to leave the regulation of sizes and weights to the States, it did condition Federal aid upon State weight and width maximums not exceeding certain ceilings. The Congress did not impose a ceiling on maximum allowable length, but the legislators principally involved in that decision expected and hoped that twin-trailer combinations would not be permitted outside of some Western States "where there are long stretches of open road and little congestion of traffic." See pp. 14-17, *supra*. Indeed, as recently as 1974, in amending the weight ceiling, the Congress continued to "strongly believe that the ultimate decision on the weights of trucks is a matter for the States," rejecting a proposal to change the ceilings into mandatory requirements; and it similarly rejected a proposal to establish "a Federal guideline on the length of trucks" in the belief

[19] Statement of A. B. Gorman, President, Private Truck Council of America, Hearings on Bills Relating to the National Highway Program before a Subcommittee of the Senate Committee on Public Works, 84th Cong., 1st Sess. (1955), at 891; Hearings on H. R. 4260 before the House Committee on Public Works, 84th Cong., 1st Sess. (1955), at 258. See, also, Statement of John V. Lawrence, Managing Director, American Trucking Associations, in the Senate Hearings at 946; Statement of William A. Bresnahan, Assistant General Manager, American Trucking Associations, in the House Hearings at 1111.

"that truck lengths should remain, as they have been, a matter for State decision." See pp. 17-18, *supra*.

We think it plain, therefore, that the Federal-Aid Highway Act of 1956 is a reason why this Court should not overrule its prior decisions rather than a reason why it should do so. So, too, the increase over the years in the volume and extent of interstate motor transportation of freight supports, rather than undermines, this Court's prior decisions. The States have continually regulated the weight and size of motor vehicles while that increase has been occurring. Thus, the increase vividly demonstrates that interstate motor freight transportation has flourished under the principles established by the Court in its prior decisions, rather than having been unreasonably burdened. Since the Congress has not seen fit to supersede the authority of the States to regulate the size and weight of motor vehicles operated in interstate commerce, the courts certainly should not usurp that authority and undertake the difficult task of determining what the size or weight limitations should be.

We note that, if the courts should undertake that task, they necessarily would have to consider the interests of the railroads as well as of the motor carriers. If the courts should oust the States from the role that they heretofore have performed in that regard, then it would be for the courts, rather than the States, to protect the "vital interest in the appropriate utilization of the railroads," and "to foster a fair distribution of traffic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain." *Sproles* v. *Binford*, *supra* at 394. See pp. 24-25, *supra*.

The interests of the railroads in that regard, and of the public in their preservation and appropriate utilization, would be considerably greater than the interests of

the motor carriers in reducing their costs of operation. For example, of ton miles of intercity freight traffic transported in the United States by railroad and by motor truck, in 1939 86.5% was transported by railroad and 13.5% by motor truck,[20] while by 1975 the railroad share had been reduced to 60.8% and the truck share had increased to 39.2%.[21] This trend has had serious consequences. Not only have several railroads been bankrupted in recent years, but the rate of return on net worth of all Class I railroads in 1976 was only 1.8% while the comparable figure for motor common carriers was 14.8% (see p. 8, *supra*).

Hence, if the Court should utilize this case to enter upon the business of determining the size and weight restrictions upon motor carriers, displacing the States from their previous exercise of that role, it could well determine that the sizes and weights allowed should be decreased rather than increased. We are convinced, however, that the Court will not undertake such policy determinations now, just as it has refused to do so in the past. We believe that it still is true, as this Court stated in *Barnwell Bros.*, that "the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice . . . ." 303 U.S., at 191. See pp. 27-28, *supra*. It is difficult to see how it could be otherwise under our system as the courts are not equipped to make such policy decisions.

---

[20] Interstate Commerce Commission Statement No. 568, file No. 10-D-7, February 1956.

[21] 1976 Annual Report of the Interstate Commerce Commission.

CONCLUSION

For the reasons stated above, the decision by the district court should be affirmed.

Respectfully submitted,

RICHARD T. CONWAY
DAVID B. COOK

SHEA & GARDNER
734 Fifteenth Street, N. W.
Washington, D. C. 20005

HARRY J. BREITHAUPT, JR.
Vice President & General Counsel
E. PARKER BROWN
Assistant General Attorney
Association of American Railroads
1920 L Street, N. W.
Washington, D. C. 20036

Attorneys for the Association of American Railroads.